

ORIGINAL

Case **3:10CV1306-B**
(The Clerk of the convicting court will fill this line in.)

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

APPLICATION FOR A WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM FINAL FELONY CONVICTION
UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

JUL - 6 2010

CLERK, U.S. DISTRICT COURT
By [Signature]
Deputy

NAME: JOHN KEVIN KOTHMANN

DATE OF BIRTH: 3/27/61

PLACE OF CONFINEMENT: Hutchins State Jail - T.D.C.J.

TDCJ-CID NUMBER: 1590449

SID NUMBER: 03023192

(1) This application concerns (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> a conviction | <input type="checkbox"/> parole |
| <input type="checkbox"/> a sentence | <input type="checkbox"/> mandatory supervision |
| <input checked="" type="checkbox"/> time credit | <input type="checkbox"/> out-of-time appeal or petition for discretionary review |

(2) What district court entered the judgment of the conviction you want relief from?
(Include the court number and county.)

415 PARKER

(3) What was the case number in the trial court?

CR08-0869

(4) What was the name of the trial judge?

Hon. Graham Quisenberry

Revised: March 5, 2007

- (5) Were you represented by counsel? If yes, provide the attorney's name:

Matt Hall

- (6) What was the date that the judgment was entered?

August 4, 2009

- (7) For what offense were you convicted and what was the sentence?

RETALIATION 3 years TDCJ

- (8) If you were sentenced on more than one count of an indictment in the same court at the same time, what counts were you convicted of and what was the sentence in each count?

N/A

- (9) What was the plea you entered? (Check one.)

☐ guilty-open plea

☒ guilty-plea bargain

☐ not guilty

☐ nolo contendere/no contest

If you entered different pleas to counts in a multi-count indictment, please explain:

- (10) What kind of trial did you have?

☒ no jury

☐ jury for guilt and punishment

☐ jury for guilt, judge for punishment

- (11) Did you testify at trial? If yes, at what phase of the trial did you testify?

N/A

- (12) Did you appeal from the judgment of conviction?

☐ yes

☒ no

If you did appeal, answer the following questions:

- (A) What court of appeals did you appeal to? N/A
- (B) What was the case number? N/A
- (C) Were you represented by counsel on appeal? If yes, provide the attorney's name: N/A
- (D) What was the decision and the date of the decision? N/A
- (13) Did you file a petition for discretionary review in the Court of Criminal Appeals?
- ☐ yes ☒ no

If you did file a petition for discretionary review, answer the following questions:

- (A) What was the case number? N/A
- (B) What was the decision and the date of the decision? N/A
- (14) Have you previously filed an application for a writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure challenging *this conviction*?
- ☐ yes ☒ no

If you answered yes, answer the following questions:

- (A) What was the Court of Criminal Appeals' writ number? N/A
- (B) What was the decision and the date of the decision? N/A
- (C) Please identify the reason that the current claims were not presented and could not have been presented on your previous application.

N/A

- (15) Do you currently have any petition or appeal pending in any other state or federal court?

☐ yes

☒ no

If you answered yes, please provide the name of the court and the case number:

- (16) If you are presenting a claim for time credit, have you exhausted your administrative remedies by presenting your claim to the time credit resolution system of the Texas Department of Criminal Justice? (This requirement applies to any final felony conviction, including state jail felonies)

☒ yes

☐ no

If you answered yes, answer the following questions:

(A) What date did you present the claim? 4/5/2010

(B) Did you receive a decision and, if yes, what was the date of the decision?

I have not recieved a decision.

If you answered no, please explain why you have not submitted your claim:

Please see exhibit A from the OFFENDER ORIENTATION H.B.
States OFFENDER may file if he is within 180 days
of "presumptive PAROLE Date"
EXHIBIT B - 01/2011 on "D.M.S. NEXT REVIEW"

- (17) Beginning on page 6, state *concisely* every legal ground for your claim that you are being unlawfully restrained, and then briefly summarize the facts supporting each ground. You must present each ground on the form application and a brief summary of the facts. *If your grounds and brief summary of the facts have not been presented on the form application, the Court will not consider your grounds.*

If you have more than four grounds, use page 10 of the form, which you may copy as many times as needed to give you a separate page for each ground, with each ground numbered in sequence.

You may attach a memorandum of law to the form application if you want to present legal authorities, but the Court will *not* consider grounds for relief in a memorandum of law that were not stated on the form application. If you are challenging the validity of your conviction, please include a summary of the facts pertaining to your offense and trial in your memorandum.

GROUND ONE:

I WILL GET Credit from the day the
detainer was placed for M.T.R. Dallas County

FACTS SUPPORTING GROUND ONE:

December 20, 2007 I was placed on Felony Probation
for (EHA 5328). September 26, 2008 I was arrested
in Parker County TX. for Retaliation/Obstruction and
Public intox. I was given a \$3,000.00 bond for
Retaliation and time served on the Public intox.
Before I could bond out, Dallas County issued M.T.R.
giving me a NO BOND status. Ex Parte Spates, 521
S.W. 2d 265 (Tex. Crim. App. 1975) I am ENTITLED to
credit for this time

August, 4, 2009 I was convicted for retaliation
and sentenced to T.D.C.J. to run concurrent
with all back-time (CR08-0869) See EXHIBIT "C"
Feb. 8, 2010 my 3yr Felony Probation was revoked
and I was sentenced to 2yrs TDCJ to run
concurrent with all back-time.

(please go to page 10)

GROUND TWO:

I get credit while in TDCJ on other charges if a detainer is placed against me. Ex Parte Bynum, 772 S. W2d 113 (Tex Crim. App. 1989)

FACTS SUPPORTING GROUND TWO:

Just because I couldn't find the detainer (please see exhibits "F" and "E") the fact remains that I was bench warrant to Dallas 2-8-2010 for MTR. NOTE: this was 5 days before my mandatory of 2-13-2010 for CR08-0869 and subsequent D.M.S. (please see exhibit "B"). So, there was in fact a detainer in place; therefore, I am entitled to this time as well. The 2yr. sentence for MTR (EHA 5328) does in no way begin at my short-way for CR08-0869 as the D.A. has calculated my time. The "Hold" real or implied, were in fact in place. The DA can't have his cake and eat it too! Undeniably its in the best interest of the D.A. to structure her case without a hold being specifically in place (prevent overlapping) but the overall design (fresh felony conv.; TDC time; bench warrant; prob. rev.; TDC time) hints of the hold by proxy and by inference an overall designer.

GROUND THREE:

my Inmate Trust Fund Account #1590449 has been charged \$1711.00 Court fee that Hon. Graham Quisenberry ordered that I did not have to pay - as well as 282 Court in Dallas

FACTS SUPPORTING GROUND THREE:

Exhibit "J" is Order Determining Appointment of Counsel - Indigent without Reimbursement

"The Court further finds Defendant presently has no financial Resources to pay or contribute to the cost of legal services and related expenses."

This bill was forgiven by the court 415 District and 282 DISTRICT Respectively; therefore, needs to be stricken from my record. Upon parole or discharge a \$1711.00 outstanding bill from the courts would only be detrimental and unfair. My time incarcerated in T.P.C.J. should pay for this.

NOTE EXHIBIT K - Simply states a bill for \$1711.00 !!! No breakdown what so ever. Where did this figure come from?

GROUND FOUR:

The way this time is calculated is
not what I plea bargained for with my attorney.

FACTS SUPPORTING GROUND FOUR:

EXHIBIT
 "C"

From the start, Sept 26, 2008, (the day of my
arrest) I was up-front With the officials of Parker
Co. and my attorney, Matt Hall, that I was on Felony
Probation in Dallas County. During negotiations, Matt
Hall even spoke to my probation officer, MRS. Williams
from the Buckner office in Dallas. The D.A. in Dallas
County was involved in the plea agreement. Parker
County and Dallas County were informed through
my attorney that I was pleading out to 3 yrs TDCS
to run concurrent with Dallas County's revocation
I was told by Matt Hall that per Standard
Operating Procedure that Dallas Co. would run
theirs under Parker Counties. Now, after it has
been done, Dallas County ran theirs over
Parker County's actually increasing the maximum
expiration date by 2 months. ~~I've been played~~
for a fool! This was misleading and confusing and not
what I plea bargained for.

GROUND: ONE

FACTS SUPPORTING GROUND:

So the hold out of Dallas Co. was placed on me sometime in Oct. of 2008. EXHIBIT "D" is a bond issued after my Lawyer, Matt Hall, went on sick leave for Heart Surgery. His case load was put on hold; therefore, bonds were issued in fairness. EXHIBIT "D" proves the existence of a Dallas Co. hold for F07584035.

EXHIBIT "E" is an I-60 to the Records Dept. showing no Detainers as of 10/15/09 ???

EXHIBIT "F" is a request from me thru SCFO to District Attorney Dallas County to revoke my probation. It was ignored and I was bench warrant to court 2/8/2010 (Five days before my mandatory on CR08-0869.) NOTE EXHIBIT "B" DMS was issued at this time. NOT ONLY DID THIS Legal maneuver cost me a year set off but they are trying to change my dates too. See exhibit "G"

WHEREFORE, APPLICANT PRAYS THAT THE COURT GRANT APPLICANT RELIEF TO WHICH HE MAY BE ENTITLED IN THIS PROCEEDING.

Ground One

Fact Supporting Ground:

exhibit "G" page #2 under Remarks:

SBD and max DT Change from SBD 09-26-08 to SBD 11-20-09 max DT 09-26-11 to max DT 11-20-11.
 "KEYED W/O CARD R.H." IS THIS S.O.P. ??
 These calculations do NOT reflect time credited back to the date the MTR was issued out of Dallas County. They had me denied Bond until exhibit "D" was issued. Never the less there was still a hold out of Dallas County.

EXHIBITS "H" and "I" are time sheets. "H" is for a 3yr Sentence, JOHN K. KOTHMANN 1590449. It reflects 101%.

"I" is a 2yr. Sentence, JOHN K. KOTHMANN 1590449. It reflects 38%. Two Separate time sheets. One TDC #!!
 I'm being informed by Unit Parole that the 2yr. sentence is now the "dominant" sentence actually increasing the maximum expiration date by 2 months. EXHIBIT "F" from SCFO says the holding case is the 3yr. sentence, in direct conflict with each other.
 Concurrent with all back-time, the 2yr sentence F-0758403-5 should have S.B.D. Sometime in October of 2008; therefore exhausted, run its course, by Oct. 2010. (max. Exp. DT.)

VERIFICATION

(Complete EITHER the "oath before a notary public" OR the "inmate's declaration.")

OATH BEFORE NOTARY PUBLIC

STATE OF TEXAS, COUNTY OF _____

_____, BEING FIRST DULY SWORN, UNDER OATH, SAYS:
THAT HE/SHE IS THE APPLICANT IN THIS ACTION AND KNOWS THE CONTENT OF
THE ABOVE APPLICATION AND ACCORDING TO APPLICANT'S BELIEF, THE FACTS
STATED IN THE APPLICATION ARE TRUE.

Signature of Applicant

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____

Signature of Notary Public

INMATE'S DECLARATION

I, John Kevin Rothmann, BEING PRESENTLY
INCARCERATED IN Hutchins State Jail, DECLARE UNDER
PENALTY OF PERJURY THAT, ACCORDING TO MY BELIEF, THE FACTS STATED IN
THE APPLICATION ARE TRUE AND CORRECT.

SIGNED ON 6-24-10

John Kevin Rothmann
Signature of Applicant

Signature of Attorney

Attorney Name: _____

SBOT Number: _____

Address: _____

Telephone: _____